

**In the United States District Court
for the District of Minnesota**

Mark Allan

v.

Jacob Joseph LEW

CASE #: 0:14-cv-01332-DSD-FLN

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Refusal for Cause

The original Response to Default judgment (marked in red R4C) and a copy are hereby filed as marked by the clerk of court. The original is intended for the Presenter – “United States District Attorney - Andrew W. Lugar”. The copy (black R4C) is intended for the clerk of court. Filing by hand two additional copies will be marked by the USDC for sending to all other parties corresponding in this matter.



IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MINNESOTA

MARK ALLAN,

Plaintiff,

v.

JACOB JOSEPH LEW,

Defendant.

Case No. 14-cv-01332-DSD-FLN

**UNITED STATES' RESPONSE TO
PLAINTIFF'S DEFAULT
JUDGMENT FILING**

On July 22, 2014, Plaintiff Mark Allan Fiedler¹ filed a document entitled "Default judgment," which was docketed as a "Request for Default Judgment." (See Dkt. No. 14.) To the extent Fiedler's "Default judgment" is construed as a request for entry of default or default judgment against the United States or against named defendant Jacob Joseph Lew, Fiedler's request should be denied.

Fiedler filed a document entitled "Counterclaim" on April 29, 2014. (See Dkt. No. 1.) In his "Counterclaim," Fiedler named Secretary of the Treasury Jacob Lew as a defendant and makes factual allegations relating to an April 23, 2014, letter he received from the IRS. (*Id.*) The United States moved to dismiss Fiedler's "counterclaim" on July 11, 2014, arguing that Fiedler has failed to state a claim upon which relief can be granted

¹ The plaintiff's full name is Mark Allan Fielder. (See Exhibit to Fiedler's complaint, April 23, 2014, letter from IRS to Fiedler, Dkt. No. 1-2.)

and has failed to assert a basis for waiver of the United States' sovereign immunity. (Dkt. Nos. 5, 7.) The United States also argued that it should be substituted as the proper defendant to Fiedler's claims, instead of Treasury Secretary Lew, because Fiedler's allegations relate to a letter he received from the IRS, not any actions that Lew himself has taken and, in any event, relate to actions taken by government employees in their official capacities. (See Dkt. No. 7, citing *Atkinson v. O'Neill*, 867 F.2d 589, 590 (10th Cir. 1989) ("When an action is one against named individual defendants, but the acts complained of consist of actions taken by defendants in their official capacity as agents of the United States, the action is in fact one against the United States.") and *Brockinton v. City of Sherwood*, 503 F.3d 667, 674 (8th Cir. 2007)).

In his "Default judgment" document, Fiedler contends that default is appropriate because the United States—and not Lew—responded to Fiedler's complaint. (Dkt. No. 14 at 1.) Fiedler's argument is meritless because Lew is not the proper defendant to Fiedler's complaint, and the United States should be substituted in his place. "When a federal employee has been impermissibly named as defendant, the Court *must* substitute the United States as the proper-named defendant and dismiss the erroneously named employee." *Pomerenke v. Bird*, 2014 U.S. Dist. LEXIS 673, at *1 n.1 (D. Minn. Jan. 3, 2014) (Doty, J.) (citation omitted and emphasis added).

Accordingly, because the United States is the proper defendant to Fiedler's claims and because the United States has moved to dismiss Fiedler's complaint, there is no basis for entry of default or default judgment against the United States or Lew. Therefore, if

Fiedler's "Default judgment" document is construed as a request for entry of default or default judgment, it should be denied.

Date: August 8, 2014

Respectfully submitted,

ANDREW M. LUGER
United States Attorney

TAMARA W. ASHFORD
Acting Assistant Attorney General

/s/ Erin Lindgren
ERIN LINDGREN
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Case No. 14-cv-01332-DSD-FLN

LOCAL RULE 7.1 WORD COUNT COMPLIANCE CERTIFICATE

Pursuant to Local Rule 7.1(f)(2), I certify that the United States' Response to Plaintiff's Default Judgment Filing complies with the word limits of Local Rule 7.1(f) and with the type-size limit of Local Rule 7.1(h).

I further certify that, in preparation of this response, I used Microsoft Word 2010, and that this word processing program has been applied specifically to include all text, including headings, footnotes, and quotations in the following word count.

I further certify that the above-referenced response contains 464 words.

/s/ Erin Lindgren

ERIN LINDGREN

Trial Attorney, Tax Division

U.S. Department of Justice

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CERTIFICATE OF SERVICE BY MAIL

I certify that on August 8, 2014, I filed with the Clerk of Court via CM/ECF the following documents:

United States' Response to Plaintiff's Default Judgment Filing

and I certify that I caused a copy of the foregoing documents to be sent by U.S. mail, postage-paid to:

Mark A. Fiedler
7034 Lake Shore Drive S.
Richfield, MN 55432

/s/ Erin Lindgren
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